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You will be addressing the 70 lawyers who are attending the Intelligence Community Legal Conference at Williamsburg on May 11 at 7:45 p.m. The topic, suggested by [redacted] is "From the FBI to the CIA: A Comparison of Legal Concerns." A list of those attending the conference and a copy of the agenda is attached.

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In helping you prepare for these remarks, we met with your special assistants, [redacted] and with a representative from the Office of General Counsel, [redacted]. During the two planning sessions, they suggested that general talking points would be most useful for you, and would act as a springboard for your own observations. [redacted] in a separate conversation, echoed that view, and added that he thought the lawyers would appreciate hearing that during your tenure the role of lawyers would be important. They would also be interested in hearing about the relationship CIA has with Congress, and the tension between providing information and protecting sources and methods. Russ added that people will be most interested in hearing about all these issues from your perspective.

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[redacted] also attended one of the planning sessions. In comparing the two organizations and the legal issues which concern them, he observed, "In the FBI, it was helpful to have been a judge. In the CIA, what is needed is a theologian." We did not include this remark in the outline, but thought you would enjoy his observation.

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Your proposed talking points are attached, as well as an annex containing a copy of Executive Order 12333, and the Foreign Surveillance Act of 1978.

Bill Baker

Attachments:

As Stated



PROPOSED TALKING POINTS
FOR
WILLIAM H. WEBSTER
DIRECTOR OF CENTRAL INTELLIGENCE
AT THE
INTELLIGENCE COMMUNITY LEGAL CONFERENCE
WILLIAMSBURG, VA.
MAY 11, 1988

FROM THE FBI TO THE CIA: A COMPARISON OF LEGAL CONCERNS

INTRODUCTION

- WELCOME
- REFERENCE TO IMPORTANCE OF CONFERENCE. OPPORTUNITY TO ADDRESS ISSUES OF MUTUAL CONCERN.
- (THIS IS AN APPROPRIATE PLACE FOR YOU TO STATE THE IMPORTANT ROLE LAWYERS HAVE IN THE INTELLIGENCE COMMUNITY)

SIMILARITIES FBI/CIA

- BOTH FBI AND CIA OPERATE WITHIN GUIDELINES, PROCEDURES OF LAW.
- BOTH OBEY CERTAIN PRINCIPLES: OPERATIONS MUST MAKE SENSE TO THE AMERICAN PUBLIC.
- BOTH ARE PART OF THE INTELLIGENCE COMMUNITY AND ARE ENGAGED IN MATTERS AFFECTING NATIONAL SECURITY.

DIFFERENCES

BUT THE FUNCTION OF THE TWO INSTITUTIONS AND THE PRIMARY FOCUS OF ACTIVITY IS QUITE DIFFERENT.

FBI

- FBI IS PRIMARILY A LAW ENFORCEMENT, NOT AN INTELLIGENCE GATHERING ORGANIZATION
- FBI PRIMARILY OPERATES DOMESTICALLY -- COUNTERINTELLIGENCE MATTERS INVOLVE OPERATIONS OVERSEAS, BUT MOST OPERATIONS ARE CONDUCTED WITHIN THE UNITED STATES.
- FBI ACTIVITIES ARE PRIMARILY AIMED AT SECURING EVIDENCE WHICH IS ADMISSABLE IN COURT.

CIA

- MUCH EFFORT IS SPENT BY CIA ATTORNEYS IN KEEPING EVIDENCE OUT OF COURT.
- CIA EFFORTS IN GENERAL ARE NOT AIMED AT ENFORCEMENT OR PROSECUTION, BUT IN COLLECTION OF INTELLIGENCE.

- CIA COLLECTS INTELLIGENCE OVERSEAS. ANY INTELLIGENCE GATHERED DOMESTICALLY FROM AMERICAN CITIZENS IS PROVIDED BY WITTING PERSONS -- PERSONS WHO KNOW THEY ARE PROVIDING INFORMATION TO THE CIA AND WHO DO SO VOLUNTARILY. THE SAME, INCIDENTLY, IS TRUE OF GATHERING INFORMATION FROM AMERICANS WHO ARE OVERSEAS. AN AMERICAN WHO CHOOSES TO SUPPLY INFORMATION TO THE CIA WILL KNOW THAT HE OR SHE IS DEALING WITH THE U.S. GOVERNMENT. THE CIA IS REQUIRED BY LAW TO DISCLOSE EITHER CIA OR GOVERNMENT AFFILIATION TO AN AMERICAN WHO IS WILLING TO SUPPLY INFORMATION.
- GENERALLY, CIA USES INTELLIGENCE ASSETS WHO ARE CITIZENS OF FOREIGN GOVERNMENTS IN COLLECTION EFFORTS. THE GOAL IS NEVER TO APPEAR IN A COURTROOM.

COOPERATIVE EFFORTS -- DISTINCT ORGANIZATIONS

THERE ARE ISSUES, OF COURSE, WHERE THE CIA AND THE FBI JOIN EFFORTS. BUT EVEN THE COOPERATIVE EFFORTS POINT TO THE DISTINCTION BETWEEN THE TWO INSTITUTIONS.

- IN DEALING WITH TERRORISM, THE FBI IS CONCERNED WITH PROTECTING U.S. CITIZENS FROM TERRORIST ATTACKS.
- THE CIA PROVIDES INTELLIGENCE ON TERRORIST ACTIVITIES -- INTELLIGENCE WHICH IS BOTH STRATEGIC AND TACTICAL -- (YOU MAY WISH TO CITE THE COOPERATIVE -- AND DISTINCTIVE -- EFFORTS OF THE FBI AND THE CIA IN PREPARING FOR THE 1984 OLYMPICS HELD AT LOS ANGELES.)

OTHER AREAS OF JOINT CONCERN ARE NARCOTICS, TECHNOLOGY TRANSFER, AND ESPIONAGE/COUNTERINTELLIGENCE. BUT AGAIN, THE FBI IS PRIMARILY INVOLVED WITH PROTECTION AND PROSECUTION, WHILE THE CIA IS -- PRIMARILY -- COLLECTING INFORMATION TO PROVIDE POLICYMAKERS.

LEGAL CONSTRAINTS FBI/CIA

YOU ARE ALL FAMILIAR WITH THE DIFFERENT LEGAL CONSTRAINTS UNDER WHICH THE TWO ORGANIZATIONS OPERATE.

FBI

- THE FBI OPERATES UNDER STATUTORY REQUIREMENTS AND JUDICIAL PRECEDENT.

- REQUIREMENTS AND GUIDELINES AFFECT ALL WORKING LEVELS OF THE FBI.
- WHEN AN FBI AGENT USES INFORMANTS, HE GOES THROUGH AN ELABORATE APPROVAL PROCEDURE.
- WHEN AN AGENT PLANS AN OPERATION OR MAKES AN ARREST, HE MUST BE CERTAIN THAT HIS OWN ACTIONS AS WELL AS THE EVIDENCE HE COLLECTS COULD STAND UP IN A COURT OF LAW.
- OVERSIGHT OF THE FBI IS DONE BY THE JUSTICE DEPARTMENT, THE COURTS, THE MEDIA, THE ACLU, AND THE PUBLIC IN GENERAL.

CIA

WHILE THE CIA, TOO, OPERATES UNDER STATUTORY REQUIREMENTS -- EXECUTIVE ORDER 12333, THE HUGHES-RYAN AMENDMENT -- THE CIA IS ALSO GOVERNED BY OVERSIGHT. IN FACT, OVERSIGHT OCCURS AT THREE LEVELS:

- INTERNALLY, BY THE OFFICE OF GENERAL COUNSEL AND BY THE OFFICE OF THE INSPECTOR GENERAL;

- WITHIN THE EXECUTIVE BRANCH BY THE INTELLIGENCE OVERSIGHT BOARD; AND
- WITHIN CONGRESS. THERE IS EXTENSIVE CONGRESSIONAL OVERSIGHT --THROUGH THE HPSCI AND THE SSCI -- AND THERE IS EXTENSIVE INFORMATION PROVIDED TO CONGRESS. LAST YEAR WE GAVE OVER 1,000 BRIEFINGS AND PROVIDED OVER 5,000 INTELLIGENCE REPORTS TO CONGRESS ON A VARIETY OF ISSUES. FIFTEEN YEARS AGO, WE GAVE ONLY 175 BRIEFINGS.
- (YOU MAY WISH TO DISCUSS SOME OF YOUR PERSONAL EXPERIENCES IN DEALING WITH THE CONGRESS THIS YEAR)

DIFFERENCES FBI/CIA

THE FBI IS ATTUNED TO THE WORKINGS OF THE JUDICIAL BRANCH, AND OPERATES UNDER A BODY OF LAW WHICH INFORMS THE DAY TO DAY WORKINGS OF THE BUREAU. THE CIA IS ATTUNED BOTH TO THE AIMS OF THE EXECUTIVE BRANCH AND THE OVERSIGHT RESPONSIBILITIES EXERCISED BY CONGRESS. HENCE, CONGRESSIONAL AND EXECUTIVE OVERSIGHT, RATHER THAN JUDICIAL

REVIEW, IS THE FINAL ARBITER OF MOST CIA ACTIVITY. THIS IS AN IMPORTANT DISTINCTION.

AMONG OTHER THINGS, SUCH A DISTINCTION DETERMINES HOW THE RESPECTIVE AGENCIES ACCOMPLISH THEIR GOALS.

- THE FBI DEPENDS NOT ONLY ON ADHERENCE TO STATUTORY LAW AND LEGAL PRECEDENT, BUT ON PUBLIC KNOWLEDGE AND UNDERSTANDING OF ITS ROLE AND ITS RESPONSIBILITIES.
- THE CIA, OF COURSE, MUST INSIST THAT ITS ROLE BE HIDDEN. TO ACKNOWLEDGE A SUCCESSFUL OPERATION IS TO GUARANTEE ITS FAILURE.

LEGISLATION - FISA

THE RELATIVE OPENNESS OF THE TWO INSTITUTIONS -- DETERMINED BY THEIR DIFFERENT RESPONSIBILITIES -- IS REFLECTED IN THE LEGISLATION.

- IN MY VIEW, FISA, ENACTED WHILE I WAS AT THE BUREAU, IS AN EXCELLENT EXAMPLE OF CREATIVE LEGISLATION WHICH HAS BEEN SUCCESSFUL IN REASSURING THE AMERICAN PUBLIC ABOUT THE LEGITIMACY OF ELECTRONIC SURVEILLANCE IN THE UNITED STATES AND

THE INTEGRITY OF THE REVIEW AND APPROVAL PROCESS. AT THE SAME TIME, FISA HAS FOSTERED ACTIVITIES THAT ARE MAKING A SIGNIFICANT CONTRIBUTION TO OUR INTELLIGENCE EFFORTS.

- SINCE ENACTMENT OF THE STATUTE IN 1978 THE NUMBERS OF INTELLIGENCE WIRETAPS HAVE INCREASED SIGNIFICANTLY.
- THERE IS AN ELABORATE EXECUTIVE BRANCH PROCESS DEVELOPED -- THAT I PARTICIPATED IN -- TO ENSURE THAT EACH SURVEILLANCE WAS CONDUCTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THE STATUTE BEFORE APPLICATIONS WERE SUBMITTED TO THE COURTS.
- I HAVE BEEN IMPRESSED WITH THE SECURITY OF THE PROCESS, BOTH WITHIN THE EXECUTIVE BRANCH AND THE JUDICIARY. THIS PROCESS IS GOVERNED BY SECURITY PROCEDURES DEVELOPED BY THE DIRECTOR OF CENTRAL INTELLIGENCE AND PROMULGATED BY THE CHIEF JUSTICE.
- THE CONSTITUTIONALITY OF THE FISA PROCESS HAS BEEN UPHELD IN A NUMBER OF FEDERAL COURT CASES AND NOW SEEMS TO BE SETTLED.

- THE NET EFFECT OF FISA HAS BEEN TO REMOVE A HIGHLY SENSITIVE SUBJECT FROM THE AREA OF PUBLIC CONCERN BY ESTABLISHING PRECISE LEGAL STANDARDS AND JUDICIAL INVOLVEMENT.

ALTHOUGH I HAVE LEFT THE BUREAU, I FIND THAT I HAVE NOT LEFT FISA.

- I AM PART OF THE PROCESS BY WHICH FISA SURVEILLANCES DIRECTED AT FOREIGN ESTABLISHMENTS AND FOREIGN OFFICIALS ARE REVIEWED, COORDINATED, AND APPROVED.
- I AM ALSO INVOLVED IN THE REVIEW PROCESS FOR SURVEILLANCES CONDUCTED OVERSEAS INVOLVING U.S. PERSONS. THESE SURVEILLANCES, WHICH ARE SIMILAR TO FISA SURVEILLANCES, ARE SCRUTINIZED AS CLOSELY AS ANY FISA SURVEILLANCE. THE DIFFERENCE IS THAT ATTORNEY GENERAL APPROVAL IS REQUIRED INSTEAD OF THE FISA COURT.

PUBLIC PERCEPTION OF MISSION

AT THE BUREAU, WE WORKED TO EXPLAIN OUR MISSION TO THE PUBLIC, TO ESTABLISH OUR ROLE AS THE INVESTIGATIVE ARM OF THE DEPARTMENT OF

JUSTICE. OUR SUCCESS IN SUCH CASES AS GREYLORD AND ABSCAM GAVE US AN OPPORTUNITY TO EARN PUBLIC SUPPORT.

- IN THE GREYLORD CASES, THE BUREAU TOOK ON BASIC CORRUPTION IN THE COURTS OF COOK COUNTY, A PROBLEM THAT HAD EXISTED FOR TWO DECADES. THERE WERE OVER 200 CONVICTIONS AS A RESULT OF THAT INVESTIGATION, AND THE TRIALS ARE ONGOING.
- IN THE ABSCAM CASES, WE WORKED TO UNCOVER AND DETER OFFICIAL CORRUPTION IN THE LEGISLATIVE PROCESS.

THE FBI, OPERATING UNDER STATUTORY LAW AND JUDICIAL REVIEW, COULD OPENLY APPEAL TO THE PUBLIC FOR HELP IN APPREHENDING FELONS. THERE WAS GENERAL AGREEMENT THAT TO DO SO WAS A GOOD THING.

I HAVE FOUND THAT THE ACTIVITIES OF THE CIA ARE NOT UNIVERSALLY UNDERSTOOD, AND CERTAINLY NOT UNIVERSALLY APPLAUDED. THE CIA CANNOT TRUMPET ITS SUCCESSES, LEGAL OR OTHERWISE.

CONCLUSION

BUT IT IS ESSENTIAL THAT THE AMERICAN PUBLIC LEARN ABOUT THE LAWS AND OVERSIGHT RESPONSIBILITIES THAT GOVERN INTELLIGENCE. FOR

AMERICANS, ABOVE ALL, NEED TO BELIEVE THAT THE LAWS OF THIS COUNTRY ARE WORKING FOR THEM -- NOT AGAINST THEM. THEY NEED TO BELIEVE THAT LAWS ARE APPLIED FAIRLY AND CONSISTENTLY. AND THEY ALSO NEED TO BELIEVE THAT THEIR GOVERNMENT IS RESPONSIVE, ACCOUNTABLE, AND NOT ABOVE THE LAW.